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THE ROLE OF MINDFULNESS IN THE ONGOING EVOLUTION OF LEGAL EDUCATION

Scott L. Rogers^{*}

I. INTRODUCTION

When a noble profession, such as the law, finds itself in crisis, an opportunity presents itself to take a hard look at the forces at play, both within and outside the profession, and to profoundly influence the course of its ongoing evolution. Among the many changes taking place within legal education is one for which there is a corresponding change across the legal profession. Known as “mindfulness,” this ancient practice is finding modern day application and scientific support that has resulted in law faculty, administrators, and students exploring ways it might be meaningfully integrated into the law school experience. Doing so, many legal educators believe, can help students cultivate insights, attitudes, and skills that are fundamental to their wellbeing and capacity to learn, and translate into necessary tools as the legal profession, society, and the global community together move into a challenging and exciting era.

This paper begins by introducing mindfulness, offering an overview of the ways mindfulness is being brought into law schools and the role it is playing in the lives of law faculty and law students. It then advocates for the infusion of mindfulness across the curriculum and identifies instances where the integration of mindfulness may serve as a catalyst for a finer comprehension of, and engagement with, course content. This infusion may facilitate a deeper absorption of mindfulness insights and practices. Because mindfulness has many forms of learning and practice, some of the different approaches of those law faculty teaching mindfulness today are discussed so that the term might be more broadly understood. Finally, because the professional responsibility curriculum lends itself especially well to mindfulness across a variety of perspectives, special attention is given to this integration.

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II. MINDFULNESS

Only a handful of years ago, a section in a law review article containing the term “mindfulness” would have been a rare event, likely introducing readers to the term for the first time. While this article presumes, at best, a passing familiarity with mindfulness, it is worth noting that in the last fifteen years more than 100 articles have appeared in law reviews, bar journals, and national periodicals addressing the role of mindfulness in legal education¹ and across the profession.² The significance of this fact resides both in the rapid embrace of mindfulness within the legal profession, as it mirrors its engagement in education,³ medicine,⁴ psychology,⁵ athletics,⁶ the military,⁷

1. See Scott L. Rogers, *Mindfulness in Law*, in THE WILEY-BLACKWELL HANDBOOK OF MINDFULNESS 487 (Amanda Le et al. eds., 2014) [hereinafter Rogers, *Mindfulness in Law*]; Rhonda V. Magee, *Educating Lawyers to Meditate?*, 79 UMKC L. REV. 535, 536–39 (2011) [hereinafter Magee, *Educating Lawyers*]; Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness, Meditation to Law Students, Lawyers, and Their Clients*, 7 HARV. NEGOT. L. REV. 1, 33–65 (2002) [hereinafter Riskin, *The Contemplative Lawyer*].

2. See Rogers, *Mindfulness in Law*, *supra* note 1, at 487; Magee, *Educating Lawyers*, *supra* note 1, at 536–39; Riskin, *The Contemplative Lawyer*, *supra* note 1, at 33–65. See also Articles, MINDFULNESS IN LAW, <http://mindfulnessinlawclass.com/resources/> (last visited Aug. 12, 2014); Articles on Law and Meditation, THE PROCEEDINGS OF THE MINDFUL LAWYER CONFERENCE, <http://mindfullawyerconference.org/resources.htm#articles> (last visited Aug. 12, 2014).

3. See, e.g., DANIEL GOLEMAN, FOCUS: THE HIDDEN DRIVER OF EXCELLENCE 186 (2013); Lisa Flook et al., *Effects of Mindful Awareness Practices on Executive Functions in Elementary School Children*, 26 J. APPLIED SCH. PSYCH. 70 (2010); see generally SUSAN KAISER GREENLAND, THE MINDFUL CHILD (2010); see also MINDFUL KIDS MIAMI, <http://mindfulkidsmiami.com> (last visited Feb. 9, 2014); MINDFUL SCHOOLS, <http://www.mindfulschools.org> (last visited Feb. 4, 2014).

4. See Michael S. Krasner et al., *Association of an Educational Program in Mindful Communication with Burnout, Empathy, and Attitudes Among Primary Care Physicians*, 302 J. AM. MED. ASS'N 1284 (2009); Ronald M. Epstein, *Mindful Practice*, 282 J. AM. MED. ASS'N 833 (1999); Shauna L. Shapiro et al., *Effects of Mindfulness-Based Stress Reduction on Medical and Premedical Students*, 21 J. BEHAV. MED. 581 (1998). See generally Pauline W. Chen, *Doctor and Patient: Practicing Mindfulness as Well as Medicine*, N.Y. TIMES, Oct. 20, 2009; SAKI SANTORELLI, HEAL THY SELF: LESSONS ON MINDFULNESS IN MEDICINE (1999).

5. See generally DANIEL J. SIEGEL, THE MINDFUL THERAPIST (2010); CHRISTOPHER K. GERMER ET AL., MINDFULNESS AND PSYCHOTHERAPY (2005).

6. See Timothy Pineau et al., *Mindfulness in Sports Performance*, in THE WILEY-BLACKWELL HANDBOOK OF MINDFULNESS 1004 (Amanda Le et al. eds., 2014).

7. Greg Breining, *Boot Camp for the Brain*, MIAMI MAGAZINE, Fall 2012, available at <http://miami.univmiami.net/boot-camp/>; Elizabeth A. Stanley & Amishi P. Jha, *Mind Fitness: Improving Operational Effectiveness and Building Warrior Resilience*, 55 JOINT FORCE Q. 144 (2009).

and across vast segments of society.⁸ This trend is not likely to dissipate anytime soon.⁹

A. What is Mindfulness?

Mindfulness is both an experiential practice and a way of being more attuned and responsive to present moment concerns.¹⁰ That is, we practice mindfulness as an end in itself and as a means to develop a more meaningful and satisfying way of relating to our life experiences. The practice of mindfulness involves *intentionally paying attention to present moment experience in a way that is engaged and unassuming*. By “engaged,” I mean attentive, interested, and observant, and by “unassuming” I mean being without judgment—open and receptive to what arises in the field of awareness. Addressing these terms used to describe mindfulness will enhance our shared understanding of this essentially ineffable practice.

We are always paying attention in some form or another. Our capacity to process information and make decisions transpires across many levels of awareness, and our brains are continuously receiving sensory input from multiple sources.¹¹ We pay attention when we drive home from work, and we pay attention when someone is talking to us.¹² Proof resides in our arriving home, and in the nods and “uh-huhs” we deliver at just the right time. But as we all know, often our minds are elsewhere, and we do not remember much of the passing scenery or content of the conversation. While our atten-

8. Kate Pickert, *The Mindful Revolution: The Science of Finding Focus in a Stressed-Out Multitasking Culture*, TIME, Feb. 3, 2014, at 40–46; Dan Hurley, *Breathing In vs. Spacing Out*, N.Y. TIMES MAGAZINE, Jan. 14, 2014, available at http://www.nytimes.com/2014/01/19/magazine/breathing-in-vs-spacing-out.html?_r=0; Amishi P. Jha, *Being in the Now*, SCI. AM. MIND, Mar. 2013, at 26, available at <http://www.themindcentre.com.au/wp-content/uploads/2013/03/Scientific-American-article.pdf>.

9. See Amanda Mascarelli, *Mindfulness: Is It a Fad or a Powerful Life-Changing Coping Skill? A Look at the Science*, THE WASHINGTON POST, Mar. 10, 2014, available at http://www.washingtonpost.com/national/health-science/mindfulness-is-it-a-fad-or-a-powerful-life-changing-coping-skill-a-look-at-the-science/2014/03/07/a43d36f4-a2ed-11e3-8466-d34c451760b9_story.html; Carolyn Gregoire, *Why 2014 Will Be The Year of Mindful Living*, HUFFPOST: THE THIRD METRIC (Jan. 2, 2014, 9:06 AM), http://www.huffingtonpost.com/2014/01/02/will-2014-be-the-year-of-_0_n_4523975.html; but see Ron Purser & David Loy, *Beyond McMindfulness*, HUFFPOST: RELIGION (July 1, 2013, 10:24 AM), http://www.huffingtonpost.com/ron-purser/beyond-mcmindfulness_b_3519289.html (offering important criticisms of the rapid expansion of mindfulness and myriad touted benefits).

10. Jon Kabat-Zinn introduced the popular definition of mindfulness as “paying attention in a particular way: on purpose, in the present moment, and nonjudgmentally.” JON KABAT-ZINN, WHEREVER YOU GO THERE YOU ARE 4 (1994).

11. DANIEL J. SIEGEL, THE MINDFUL BRAIN 54 (2007); PETR BOB, BRAIN, MIND & CONSCIOUSNESS: ADVANCES IN NEUROSCIENCE RESEARCH 1–10 (2011).

12. See Jha, *supra* note 8, at 26.

tion was divided, we may not have much recall of what we were thinking about, or, for that matter, that our minds had wandered off in the first place. This conduct could be regarded as mindless, a state perhaps best characterized as being on automatic pilot.¹³

In contrast, when we pay attention *intentionally*, we are aware of the fact that we are directing our attention toward an object, whether it be the scenery or the content of a conversation, and we intend to keep our attention focused in this direction. Experience suggests just how challenging this can be,¹⁴ and one of the fruits of a mindfulness practice is doing so with greater mastery.¹⁵

The *engaged* aspect to a mindfulness practice is an attentiveness to the mind's inclination to wander and the capacity to redirect attention to the original object when it does.¹⁶ When our attention is placed on an object—say the words you are now reading—with the intention to comprehend what is written, the mind nonetheless is prone to wander.¹⁷ This digression might be traced to an event arising in the field of awareness (e.g., an aroma, a person passing by) or an inner experience (e.g., a thought, feeling, or sensation triggering a series of associations or stream of consciousness), and may last a few moments or for an extended period of time. It may wander into one arena or consist of a series of thoughts, linked by common threads but moving far afield from the original object of attention.

As will be discussed, this quality of noticing and bringing a wandering attention back to an intended object is the heart of many modern-day mindfulness practices.¹⁸

13. ZINDEL V. SEGAL ET AL., MINDFULNESS-BASED COGNITIVE THERAPY FOR DEPRESSION: A NEW APPROACH TO PREVENTING RELAPSE 45 (2002); ELLEN J. LANGER, MINDFULNESS 9 (1990) [hereinafter LANGER, MINDFULNESS] (describing this relatively common state of mind as “when the lights’re on and nobody’s home”); Matthew A. Killingsworth & Daniel T. Gilbert, *A Wandering Mind is an Unhappy Mind*, 330 SCI. MAG. 932 (2010).

14. Steve Bradt, *Wandering Mind not a Happy Mind*, HARV. GAZETTE (Nov. 11, 2010), available at <http://news.harvard.edu/gazette/story/2010/11/wandering-mind-not-a-happy-mind/> (reporting that people spend 46.9 percent of their waking hours thinking about something other than what they’re doing).

15. See generally Alexandra B. Morrison et al., *Taming a Wandering Attention: Short-Form Mindfulness Training in Student Cohorts*, FRONTIERS IN HUM. NEUROSCIENCE 7 (2014), available at <http://journal.frontiersin.org/Journal/10.3389/fnhum.2013.00897/full>.

16. See generally SHARON SALZBERG, REAL HAPPINESS AT WORK 11 (2014); JOHN KABAT-ZINN, MINDFULNESS FOR BEGINNERS: RECLAIMING THE PRESENT MOMENT—AND YOUR LIFE 84–85 (2012).

17. See SALZBERG, *supra* note 16, at 11; KABAT-ZINN, *supra* note 16, at 84–95; Jonathan Smallwood & Jonathan W. Schooler, *The Restless Mind*, 132 PSYCH. BULL. 946 (2006); Jonathan W. Schooler et al., *Meta-awareness, Perceptual Decoupling and the Wandering Mind*, 15 TRENDS IN COGNITIVE SCI. 319 (2011).

18. E.g., WILLIAM JAMES, PSYCHOLOGY: THE BRIEFER COURSE 95 (Harper & Row 1961).

Interesting questions arise regarding the mechanisms at play when one notices that one's own mind has wandered. *Who or what has noticed?* And, if the decision is made to redirect attention (or not), *who or what is making this decision?*¹⁹ The answer to these questions remains elusive, but raising it points to the very heart of what it means to be "aware."²⁰

Often spoken of as "non-judgmental" awareness, the *unassuming* quality of mind that arises out of a mindfulness practice is an aspect of consciousness that is able to notice, but not get caught up in the content of experience.²¹ Thoughts and feelings arise, but do not dictate an impulsive reaction. An open and receptive capacity emerges that attends to moment-to-moment experience without assuming what it means or how to respond. As this quality is cultivated, we are better able to listen to words and observe conduct that triggers anger, and not become lost in rage. We can feel afraid, and not become immobilized by fear. We can disagree with someone, yet embrace the value of their beliefs, the right they have to their perspective, and even more, that their perspective is information that may prove helpful, even if contradictory to our own.²² At an even higher level of insight, we come to appreciate that we have the ability to bear the unpleasant experience and respond to whatever follows, as a matter of course.

B. The Science of Mindfulness

The benefits of practicing mindfulness continue to be revealed as neuroscience, medical, and psychological research continues to flood the scientific literature and popular press reporting on the ways mindfulness practices are associated with changes to the structure and function of the brain, and to beneficial effects on our wellbeing across a variety of domains. An Internet search of the terms "mindfulness" and "science" results in countless websites reporting or commenting on the ongoing influx of these important and fascinating findings. Many of these findings are of direct interest to members of the legal profession because they pertain to cognition (changes to the prefrontal cortex, an area associated with focus, decision-making and execu-

19. JEFFREY M. SCHWARTZ & SHARON BEGLEY, *THE MIND AND THE BRAIN: NEUROPLASTICITY AND THE POWER OF MENTAL FORCE* 18 (2002) (referring one's ability to intentional focus attention and effect a sculpting of one's own neuroanatomy as "directed neuroplasticity").

20. Michael Graziano, *How the Light Gets Out*, AEON MAGAZINE <http://aeon.co/magazine/being-human/how-consciousness-works/> (last visited July 10, 2014).

21. See KABAT-ZINN, *supra* note 16, at 106; SEGAL ET AL., *supra* note 13, at 76; SIEGEL, *supra* note 5, at 228; see also Leonard L. Riskin, *The Place of Mindfulness in Healing and the Law*, in *SHIFTING THE FIELD OF LAW & JUSTICE: RESHAPING THE LAWYER'S IDENTITY* 99 (Linda Hager et al. eds., 2007).

22. See generally DIANE MUSHO HAMILTON, *EVERYTHING IS WORKABLE: A ZEN APPROACH TO CONFLICT RESOLUTION* (2013).

tive function),²³ emotional regulation (changes to the prefrontal cortex, as well as the amygdala, an area associated with fear detection),²⁴ resilience,²⁵ wellbeing (reduction in anxiety, depression relapse, substance abuse relapse, enhanced immune functioning),²⁶ and social engagement (increased compassion and empathy).²⁷ These findings²⁸ are offering law schools, law firms, and legal organizations a credible basis to more confidently assert the importance of mindfulness training, notwithstanding its association to the often misunderstood realm of “meditation.”²⁹

23. Sara W. Lazar et al., *Meditation Experience Is Associated with Increased Cortical Thickness*, NEUROREPORT, Nov. 28, 2005, at 1893–97; see generally Eileen Luders et al., *The Unique Brain Anatomy of Meditation Practitioners: Alterations in Cortical Gyrification*, FRONTIERS IN HUM. NEUROSCIENCE, Feb. 2012, at 1, 5–6; Britta Hölzel et al., *Mindfulness Practice Leads to Increases in Regional Brain Gray Matter Density*, 191 PSYCHIATRY RES. 36 (2011); Amishi P. Jha et al., *Examining the Protective Effects of Mindfulness Training on Working Memory and Affective Experience*, 10 EMOTION 54 (2010).

24. Adrienne A. Taren et al., *Dispositional Mindfulness Co-Varies with Smaller Amygdala and Caudate Volumes in Community Adults*, PLOS ONE (May 22, 2013), available at <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0064574>.

25. Amishi P. Jha et al., *Mindfulness Training in High Stress Professions: Strengthening Attention & Resilience*, in MINDFULNESS-BASED TREATMENT APPROACHES: A CLINICIAN'S GUIDE TO EVIDENCE BASE AND APPLICATIONS 347 (Ruth A. Baer ed., 2nd ed. 2013) [hereinafter Jha et al., *Mindfulness Training*].

26. K. Witkiewitz et al., *Mindfulness-Based Relapse Prevention for Substance Craving*, 38 ADDICTIVE BEHAVIORS 1563 (2013); Stefan G. Hofmann et al., *The Effect of Mindfulness-Based Therapy on Anxiety and Depression: A Meta-Analytic Review*, 78 J. OF CONSULTING & CLINICAL PSYCHOL. 169 (2010); Richard Davidson et al., *Alterations in Brain and Immune Function Produced by Mindfulness Meditation*, 65 PSYCHOSOMATIC MED. 564 (2003); John D. Teasdale et al., *Prevention of Relapse/Recurrence in Major Depression by Mindfulness-Based Cognitive Therapy*, 68 J. OF CONSULTING & CLINICAL PSYCHOL. 615 (2000).

27. Paul Condon et al., *Meditation Increases Compassionate Responses to Suffering*, 24 PSYCHOL. SCI. 2125 (2013) (finding that subjects training in mindfulness meditation subsequently were more likely than a control group to be helpful to a person in distress); see also David DeSteno, *The Morality of Meditation*, N.Y. TIMES SUNDAY REV., July 5, 2013, at SR12, available at <http://www.nytimes.com/2013/07/07/opinion/sunday/the-morality-of-meditation.html>.

28. Tethering specific intellectual and emotional faculties to discrete regions of the brain is an oversimplification and does not adequately take into account the complex neuronal network at play as we experience internal and external stimuli. See, e.g., SALLY SATEL & SCOTT O. LILIENFELD, BRAINWASHED: THE SEDUCTIVE APPEAL OF MINDLESS NEUROSCIENCE xi (2013). Technological advances and future research will further elucidate this complexity, though at present much discussion of the effect of mindfulness practice on performance and wellbeing looks to brain regions that have been tagged with certain functions. See *infra* note 33.

29. So too are contributions to the field by popular personalities who have found themselves personally and professionally benefitted by mindfulness practice. See DAN HARRIS, 10% HAPPIER: HOW I TAMED THE VOICE IN MY HEAD, REDUCED STRESS WITHOUT LOSING MY EDGE, AND FOUND SELF-HELP THAT ACTUALLY WORKS—A TRUE STORY (2014).

C. Practicing Mindfulness

The practice of mindfulness is among the more direct and established ways to experience these qualities of awareness and their reported effects. There are many forms of practice, flowing from a variety of contemplative traditions.³⁰ One form, commonly known as a sitting practice, is one of the primary methods being introduced to law students, lawyers, and judges. This is perhaps owing to the sitting practice's simplicity, secular quality, and the many reported findings of its connection to measurable changes to the structure and function of the brain.³¹ Mindful sitting involves a few simple instructions that embody intentionally paying attention to present moment experience in a way that is engaged and unassuming. In fact, it is so simple that you may do so now, even as you read the following instructions (closing your eyes is optional, but can be helpful).

1. Assume a seated posture that is upright and stable.
2. Lower or close your eyes.
3. Bring your attention to an object (e.g., the movement of the breath through the body).
4. Form the intention to keep your attention on the object.
5. When you notice your mind wandering, bring your attention back to the object.
6. Do this for a few minutes.

You will soon enough realize that the mind wanders. One reason for focusing on an object, such as the breath, is to create a point of contrast to aid in noticing when the mind wanders away from the object. If you sit for a few minutes, you may also notice that it is not so easy to recognize the mind's wandering until after the shifting content triggers a visceral reaction, or something dislodges you from your train of thought. To more fully appreciate these observations for yourself, either (1) set an alarm for three minutes and practice the above exercise, or (2) close your eyes and, upon each exhalation, note to yourself the count, starting with one and continuing until you reach fifty.

30. See generally DANIEL GOLEMAN, *THE MEDITATIVE MIND: THE VARIETIES OF MEDITATIVE EXPERIENCE* (1996); see, e.g., Fred Travis & Jonathan Shear, *Focused Attention, Open Monitoring and Automatic Self-Transcending: Categories to Organize Meditations from Vedic, Buddhist and Chinese Traditions*, 19 CONSCIOUSNESS & COGNITION 1110 (2010).

31. Lazar et al., *supra* note 23, at 1896; see Luders et al., *supra* note 23, at 5–6; Hölzel et al., *supra* note 23, at 36–42.

Another thing you may have noticed is that this practice is not an easy one. Then again, neither is life.

III. MINDFULNESS ACROSS THE LAW SCHOOL COMMUNITY

The term “mindfulness” can mean different things to different people, largely dependent on the route by which one learns about and practices mindfulness. These routes, broadly speaking, consist of mindfulness as: (1) a form of training the brain, inspired by the science of mindfulness; (2) a westernized adaptation of an ancient Eastern practice oriented largely around stress-reduction and wellbeing; and (3) an ancient Eastern wisdom tradition and set of practices traced primarily to the historical Buddha.³² The contemporary treatment of mindfulness as a brain training exercise associated with increased focus, emotional regulation, and overall wellbeing is one that presents mindfulness as a series of basic instructions oriented around focusing and redirecting attention.³³ Many people recently introduced to mindfulness through articles, books, and at national and state legal conferences may regard and teach mindfulness from this secular, scientific perspective, viewing it as a mental endeavor—a training of the brain. And because many scientists interested in understanding the mechanisms at play when one practices mindfulness are designing studies that involve short-form mindfulness trainings, a growing body of scientific literature suggests the benefits of short-form trainings that do not call for extended periods of practice.³⁴

The above recitation is, to be sure, an oversimplification, and groups with different backgrounds are increasingly intersecting with one another as when a Buddhist teacher discusses neuroscience research,³⁵ and when a lawyer facilitating a mindfulness presentation comments that mindfulness is about alleviating suffering.³⁶ For example, the work of Ellen Langer, a social psychologist who has written and researched extensively on the subject of

32. See Rogers, *Mindfulness in Law*, *supra* note 1.

33. See Richard J. Davidson & Antoine Lutz, *Buddha's Brain: Neuroplasticity and Meditation*, IEEE SIGNAL PROCESSING MAG., Jan. 2008, at 176.

34. See, e.g., Alexandra B. Morrison et al., *supra* note 15; Zeidan, F., Gordon, N. S., Merchant, J., Goolkasian, P. (2010). Fadel Zeidan, *The Effects of Brief Mindfulness Meditation Training on Experimentally Induced Pain*, 11 J. OF PAIN 199 (2010).

35. See JOSEPH GOLDSTEIN, MINDFULNESS: A PRACTICAL GUIDE TO AWAKENING 271 (2013); SHARON SALZBERG, REAL HAPPINESS: THE POWER OF MEDITATION 18 (2011).

36. Among the historical Buddha's most notable contributions is the insight known as the Four Noble Truths, which provide (1) there is suffering, (2) there is a reason for suffering, (3) there is a pathway that frees us from suffering, and (4) the pathway itself. John Allan, *The Eightfold Path*, BUDDHANET, <http://www.buddhanet.net/e-learning/8foldpath.htm> (last visited Aug. 18, 2014).

mindfulness,³⁷ is being addressed in the legal context, from a cognitive perspective that does not depend on a meditative practice.³⁸ Importantly, many people who have been introduced to mindfulness in a particular form may be unaware of the other forms, which can lead to confusion and misunderstandings when the term mindfulness is discussed and practiced. It is introduced here to further illuminate the landscape from which faculty are developing experience and interest in introducing mindfulness to students.³⁹

A. The Mindful Law Professor

As mindfulness is making its way into law schools, a growing number of faculty are realizing an opportunity to make a profound difference in the lives of their students and community. The Mindfulness in Legal Education workshop held at Berkeley Law School in 2013 brought together more than fifty law faculty, administrators, staff, and students from across the nation, representing over thirty law schools.⁴⁰ The group consisted of those with long-term mindfulness experience as well as those recently introduced to mindfulness. Faculty who were familiar with mindfulness had been first introduced to contemplative practices from a variety of sources, including Buddhist teachings and groups, transcendental meditation, yoga, mindfulness presentations and workshops, mindfulness presentations and programs led by legal professionals, and books, articles, and audio and video recordings.⁴¹ Most attendees were interested in sharing experiences and learning effective ways of bringing mindfulness into the curriculum.

37. LANGER, MINDFULNESS, *supra* note 13; ELLEN J. LANGER, THE POWER OF MINDFUL LEARNING (1997); Ellen J. Langer, *Mindful Learning*, 9 CURRENT DIRECTIONS PSYCHOL. SCI. 220; ELLEN J. LANGER, ON BECOMING AN ARTIST: REINVENTING YOURSELF THROUGH MINDFUL CREATIVITY (2006). ELLEN J. LANGER, COUNTER CLOCKWISE: MINDFUL HEALTH AND THE POWER OF POSSIBILITY (2009); Ellen Langer & Robert P. Abelson, *The Semantics of Asking a Favor: How to Succeed in Getting Help Without Really Trying*, 24 J. PERSONALITY & SOC. PSYCH. 26 (1972).

38. Rogers, *Mindfulness in Law*, *supra* note 1; Leonard Riskin, *Two (or More) Concepts of Mindfulness in Law and Conflict Resolution*, in THE WILEY-BLACKWELL HANDBOOK OF MINDFULNESS 471 (Amanda Le et al. eds., 2014).

39. The Balance and Legal Education Section of the American Association of Law Schools (AALS) recently established a Mindfulness in Law Affinity Group, to be chaired by Professor Richard Reuben of the University of Missouri Law School. The affinity group evolved in part out of an interest in bringing together law faculty from around the country to facilitate exploration of the role of mindfulness in legal education.

40. See Scott Rogers, *Workshop on Mindfulness in Legal Education Video Available on Berkeley Initiative's You Tube Channel*, THE MINDFUL LAW BLOG (Nov. 8, 2013) <http://themindfullawprofessor.com/mindful%20law%20blog/index.php?id=8797617604226023036>. A collection of video recordings of presentations and panel discussions from the workshop are available on the Berkeley Law website: <http://www.law.berkeley.edu/15552.htm>, (last visited July 10, 2014).

41. Rogers, *Mindfulness in Law*, *supra* note 1, at 509.

Among the various paths by which faculty have been introduced to mindfulness, two have an especially rich history—in the west and east. A number of law faculty have been introduced to mindfulness through Mindfulness-Based Stress Reduction (MBSR)—an eight-week program developed thirty years ago by Jon Kabat-Zinn that draws heavily on Buddhist practices and insights while avoiding Buddhist jargon, an approach that has become firmly rooted in science.⁴² Many of those who learned mindfulness through MBSR, especially if they did so many years ago, had a personal interest in the training. It did not so much come to them as they sought it out—as indeed an eight-week commitment of forty-five minutes daily practice with two hour long weekly sessions can attest. For this group, mindfulness is not necessarily spiritual, but it is experiential and the heart of the practice entails, among other things, ongoing and regular sitting practice.

Others were introduced to mindfulness as a Buddhist practice. Many law faculty today who have been interested in mindfulness for many years came to learn about and practice mindfulness from this perspective.⁴³ They may have joined a sitting group (called a *Sangha*), read books by Buddhist teachers (such as Jack Kornfield, Sharon Salzberg, Joseph Goldstein, Shun-ryu Suzuki, Thich Nhat Hanh, and others), watched videos and listened to recorded “Dharma” talks, and participated in day and week-long silent (and not always silent) retreats.⁴⁴ For many with a Buddhist orientation,⁴⁵ the mindfulness practice generally involves a rich immersion into experiential practices, including a daily sitting practice. Even more, it brings into the practice the intellectual and experiential engagement and exploration of deep insights into fundamental aspects of our lives, and of knowing ourselves, perhaps most profoundly, the impermanence of all experience, the lack of a solid or enduring self, and the inherent suffering of all living beings.

42. JON KABAT-ZINN, *FULL CATASTROPHE LIVING: USING THE WISDOM OF YOUR MIND TO FACE STRESS, PAIN, AND ILLNESS* 1 (1990). A related route by which faculty have been introduced to contemplative practice is Transcendental Meditation, which shares with mindfulness the practice of concentrating one’s attention.

43. See Charles Halpern, *The Mindful Lawyer: Why Contemporary Lawyers are Practicing Meditation*, 61 J. LEGAL. EDUC., 641, 643 (2012) (discussing the Bay Area Working Group on Law and Meditation); see generally CHARLES HALPERN, *MAKING WAVES AND RIDING THE CURRENTS: ACTIVISM AND THE PRACTICE OF WISDOM* (2008).

44. The website www.dharmaseed.org, and associated Dharma Seed App offers a large collection of recorded talks by mindfulness teachers, including a few by attorneys such as Grove Burnett.

45. Merely because one has a Buddhist orientation or introduction to mindfulness does not mean that the person is, or considers themselves, to be a Buddhist. If they do, it does not necessarily speak to a religious orientation as Buddhism is, for many, a contemplative practice without a deity.

Regardless of one's personal relationship to the practice of mindfulness, as noted earlier, one finds in modern mindfulness training a straightforward instruction that is explicitly bereft of religion, spirituality, philosophy, or even science.⁴⁶ William James, the great philosopher and psychologist said, "The faculty of voluntarily bringing back a wandering attention, over and over again, is the very root of judgment, character and will."⁴⁷ Not surprisingly, this phrase is often looked to as both a mindfulness instruction and reason to practice. As a reminder:

1. Lower or close your eyes.
2. Train your attention on an object (like the breath).
3. When you notice your mind wandering, bring it back to the object.
4. Keep doing this (for the rest of your life).

James strongly advocated teaching students this practice as an integral part of their education.⁴⁸ Importantly, this basic mindfulness instruction for concentrating the mind connects to related mindfulness practices, such as expanding awareness through the cultivation of a more open and receptive attentiveness to momentary experience, which is sometimes referred to as "bare attention,"⁴⁹ "choiceless awareness,"⁵⁰ or "open monitoring."⁵¹ Professor Leonard Riskin's definition of mindfulness as "paying attention deliberately, moment to moment, and without judgment, to whatever is going on in the mind and body"⁵² captures the essence of this open and receptive quality.

46. Part and parcel of this statement is the points of disagreement some raise that the practice of mindfulness can, in the first instance, be isolated from the larger spiritual or contemplative context. See William S. Blatt, *What's Special About Meditation? Contemplative Practice for American Lawyers*, 7 HARV. NEGOT. L. REV. 125 (2002). While this is surely a deeply personal question, it is one that is making its way into the larger conversation. An academic treatment of this inquiry is found in the video segment, *Is Mindfulness a Spiritual Practice* in BECOMING CONSCIOUS: THE SCIENCE OF MINDFULNESS, featuring Steve Paulson, Richard Davidson, Jon Kabat-Zinn & Amishi Jha. N.Y. Acad. Sci., *Is Mindfulness a Spiritual Practice*, YOUTUBE (Feb. 6, 2013), https://www.youtube.com/watch?v=xZaCnwNjC_k.

47. JAMES, *supra* note 18, at 95.

48. *Id.*

49. WILLIAM C. COMPTON & EDWARD HOFFMAN, *POSITIVE PSYCHOLOGY: THE SCIENCE OF HAPPINESS AND FLOURISHING* 92 (2nd ed. 2013); see KABAT-ZINN, *supra* note 16, at 51–53.

50. See generally JIDDU KRISHNAMURTI, *CHOICELESS AWARENESS: A STUDY OF THE TEACHINGS OF J. KRISHNAMURTI* (Albion W. Patterson ed., 2001).

51. Davidson & Lutz, *supra* note 33.

52. Riskin, *supra* note 21, at 102–03.

B. The Mindful Law School

The promise of mindfulness in legal education flows across many important dimensions—both professionally and personally.⁵³ Its initial footprint is found in classes and programs directed to areas of wellbeing such as stress reduction, focus, and concentration,⁵⁴ and to areas more central to the practice of law such as professional identity,⁵⁵ civility,⁵⁶ and ethics.⁵⁷ During the final decade of the twentieth century, a small number of faculty had experimented with weaving mindfulness into one or more of these contexts. Absent support by top administrators, many reported “flying under the radar” with their practices for fear of jeopardizing tenure, rubbing colleagues the wrong way, or sending an unintended message. The release of the Carnegie Report in 2007 validated the need for practices like mindfulness,⁵⁸ and equipped some faculty with a renewed sense of purpose and a mandate. They found support from psychological research reporting high levels of anxiety, depression, and substance abuse among law students as they ma-

53. While the practice of mindfulness can be oriented around the study and practice of law—so as to cultivate greater mastery over the stressful, strategic, and intellectually stimulating aspects of these environments—its relevance pertains across the professional and personal.

54. See Rogers *supra* note 1.

55. Rhonda Magee, *Legal Education and the Formation of Professional Identity: A Critical Spirituo-Humanistic—“Humanity Consciousness”—Perspective*, 31 N.Y.U. REV. L. & SOC. CHANGE 467 (2007) [hereinafter Magee, *Legal Education*]; Angela P. Harris, *Toward Lawyering as Peacemaking: A Seminar of Mindfulness, Morality and Professional Identity* 61 J. LEGAL EDUC. 647 (2012).

56. See Alan S. Gold, *Mindfulness: A Challenge for our Times*, THE BULLETIN (Bar Ass’n Newsletter, Dade Cnty., Fla.), May 2012, at 6.

57. See Magee, *Educating Lawyers*, *supra* note 1, at 537; SCOTT L. ROGERS & JAN L. JACOBOWITZ, *MINDFULNESS AND PROFESSIONAL RESPONSIBILITY: A GUIDE BOOK FOR INTEGRATING MINDFULNESS INTO THE LAW SCHOOL CURRICULUM* (2012).

58. Magee, *Education Lawyers*, *supra* note 1, at 538.

triculate,⁵⁹ and the writings of legal academics that would not let these findings pass by unnoticed.⁶⁰

Today, mindfulness is being introduced to law students at more than twenty law schools, either by way of presentations, workshops, classes, externships, or student groups.⁶¹ The deans of several law schools have spoken to the importance of mindfulness, either by way of the programs they have sanctioned, their presence at mindfulness conferences, or their writings.⁶² Several law schools have held day- and weekend-long mindfulness workshops.⁶³ So too, bar review courses are exploring how mindfulness might be of benefit to students readying for the bar exam—with many of these programs offered on-site at law schools.⁶⁴

59. Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y L. & ETHICS 357 (2009); see also G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 11 AM. B. FOUND. RES. J. 225 (1986); Matthew M. Dammeyer & Narina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 L. & HUM. BEHAV. 55 (1999); Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65 (1985); Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883 (2007); Susan Daicoff, *Articles Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337 (1997).

60. Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425, 430 (2005); see generally SUSAN SWAIM DAICOFF, *LAWYER, KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES* (2004).

61. See generally Scott L. Rogers, *The Mindful Law School: An Integrative Approach to Transforming Legal Education* 28 TOURO L. REV. 1189 (2012) [hereinafter Rogers, *The Mindful Law School*] (discussing the various classes, presentations and workshops offered at Miami Law); ROGERS & JACOBOWITZ, *supra* note 57, at 4–13; Magee, *Educating Lawyers*, *supra* note 1, at 559–60.

62. For example, in 2010, University of Miami School of Law Dean, Patricia White, supported the establishment of the school's Mindfulness in Law Program. Also in 2010, Berkeley Law's Dean, Christopher Edley, convened the Mindful Lawyer Conference at Berkeley Law. See Rogers, *Mindfulness in Law*, *supra* note 1, at 506–07.

63. For example, each year Berkeley Law holds a day-long mindfulness meditation retreat for members of the Berkeley Law community, and Miami Law holds a half-day mindfulness workshop for members of the legal community.

64. In 2012, BarBri offered law students video instruction on mindfulness led by Christy Cassisa. At the University of Arizona Law School, the 2013 bar preparation course presented by the school in collaboration with Kaplan Test Prep included a session on mindfulness.

C. The Mindful Law Student

Even before mindfulness became a part of the curriculum, law students expressed an interest in meeting with one another to practice mindfulness.⁶⁵ Often these gatherings were facilitated by interested faculty.⁶⁶ As mindfulness took root within law schools, student mindfulness organizations began to form.⁶⁷ Today more than ten law schools either have formal or informal student groups focused on learning about, discussing, and practicing mindfulness.⁶⁸ Student exposure, interest, and engagement has moved to a new level with the rise in the number of law school classes that introduce mindfulness to students.⁶⁹ As students become more familiar with mindfulness and are offered the opportunity to integrate it into their academic interests and legal careers, they are inspired to write and present on mindfulness as part of class projects, law conferences, and events.⁷⁰

IV. MINDFULNESS WITHIN THE CURRICULUM

The rapid growth of courses that include mindfulness discussion or training is affirming, and the many faculty starting to introduce mindfulness into their classrooms is inspiring. In light of the variety of ways law school faculty have learned about and practiced mindfulness, coupled with their personal interest in sharing mindfulness, a collection of different approaches has emerged that can help inform faculty and law school administrators of

65. Student mindfulness groups have taken a variety of forms over the years at school such as Yale Law School, Berkeley Law, University of San Francisco Law, Miami Law, University of Missouri-Columbia School of Law, Vanderbilt Law, Golden Gate Law School, and Florida Law. See THE MINDFUL LAW STUDENT, <http://mindfullawstudent.com> (last visited July 5, 2014).

66. ROGERS & JACOBOWITZ, *supra* note 57, at 9–10.

67. Rogers, *Mindfulness in Law*, *supra* note 1, at 507.

68. See *Student Groups*, THE MINDFUL LAW STUDENT, http://mindfullawstudent.com/Student_Groups.html (last visited July 28, 2014).

69. See Harris, *supra* note 55; see also Magee, *Legal Education*, *supra* note 55, at 475.

70. At the The Mindful Lawyer 2010 conference, a group of law students from around the country participated in a panel discussion on mindfulness and the law student experience. See *Program Schedule*, THE MINDFUL LAW. 2010 CONF., <http://mindfullawyerconference.org/scheduleDescriptions.htm#31d3> (last visited July 28, 2014); see also Katherine Larkin-Wong, Note, *A Newbie's Impression: One Student's Mindfulness Lessons*, 61 J. LEG. EDUC. 665, 665 (2012) (a law student writing of her experience in a law school class that integrated mindfulness). Students at Miami Law enrolled in "Mindfulness in Law" present on their paper topics in panel discussions that are recorded and made available on the school website both to deepen their connection to the material and to inform the larger community. See *2012 Mindful Law Student Conference*, MIAMI L. MINDFULNESS IN L. PROGRAM, <http://miamimindfulness.org/Program/Program/2012%20mindful%20law%20student%20conference/index.html> (last visited July 30, 2014).

the different ways mindfulness may be introduced to their students. A few examples are offered below.

A. Mindfulness Modules

Integrating mindfulness into the curriculum or developing a course that is explicitly oriented around mindfulness can be a tall order. In contrast, guiding a short mindfulness sitting in class carries with it far fewer hurdles and is the most common approach, for all the obvious reasons. There are two primary reasons to consider bringing mindfulness into your classroom, and a short-guided practice can be an ideal vehicle for doing so.

First, students are in need of tools to help them reduce the harmful and sometimes devastating impact of the high levels of stress they experience. Even relatively short mindfulness training and breath awareness practices have been found to be effective in helping people focus their attention and relate more effectively to stressful situations, thereby reducing anxiety, establishing calm, attenuating rumination that can lead to depression, and curbing substance abuse and relapse.⁷¹ By introducing students to short, guided sittings and creating the space for them to practice, students acquire an important tool to help them deal more effectively to the vicissitudes of law student life.

Second, the classroom discussion itself may benefit from the infusion of mindfulness. Mindfulness exercises are explicitly attention-reinforcing and distraction-attenuating practices. As students and faculty transition from one class to another, it can be helpful to the group to “pause” for a few minutes and “gather one’s thoughts.”⁷² Even more, students equipped with these tools can draw upon them during class as needed to notice when their mind is wandering and bring their attention back to the subject at hand. These students not only report feeling less stressed, but they become more interested in listening, in an open and receptive manner, to what others have to say—less judgmental of the comments and conduct of classmates and faculty. In addition to beginning class with a short guided practice, it can be helpful to pause and inject into the middle of a class discussion a short practice to allow the students to experience what Professor Leonard Riskin refers to as a “wedge of awareness.” This is helpful for reestablishing a space conducive for learning, facilitating insight, and inspiring more effective communication.

71. See *supra* notes 18–21; Taren et al., *supra* note 24.

72. For example, at several of the University of Miami School of Law’s clinics, students will begin class discussion by first filling out a one-page form that invites them to reflect on the restlessness of their mind, how best they may contribute to the forthcoming discussion, and to practice a one-minute mindfulness exercise (“Mindful Reflection Form” on file with the author).

Faculty intrigued by the possibilities mindfulness practice holds for the learning process are finding creative and accessible ways to introduce students to mindfulness. Some introduce it into the class proper, while others append it to the beginning of class. At George Washington University Law School, Professor Todd Peterson recently started beginning each of his first-year civil procedure classes with a two-minute mindfulness exercise. He believes that this exercise helps his students to be more fully engaged in the present and less distracted by whatever they brought with them into the classroom.⁷³ At Temple University Law School, Professor Margaret deGuzman invites students in her criminal law class and transitional justice seminar to arrive at class ten minutes early where she guides an eight-minute mindfulness practice before the formal start of class.⁷⁴ At Berkeley School of Law, Professor Jonathan Simon guides a “mindful minute” to students in his criminal law class, finding it to be an especially important practice given how the subject matter tends to elicit such powerful negative emotions. He invites students to bring greater awareness to the emotional reactions that arise during class discussion.⁷⁵ With the growing body of research and literature in the popular media on the many benefits of shorter form mindfulness practices,⁷⁶ it is becoming increasingly easier to make the case that a short mindfulness sitting can be helpful to academic concerns like focus, concentration, emotional regulation, and communication. Faculty who are interested in introducing students to mindfulness practices but choose, for any of a variety of reasons, not to do so in the classroom proper can begin by offering a weekly short mindfulness sitting. This approach can be traced at least as far back as 1998 when Professor Robert Burt did so for students at Yale.⁷⁷

B. Mindfulness Integrations

One of the richest engagements of mindfulness in the law school curriculum is its infusion into the class proper, directly touching and enriching the subject matter. Recently, my colleagues Rebecca Sharpless and Bernie

73. Personal Conversation with Todd D. Peterson, Professor of Law, George Washington Univ. Sch. of Law (Jan. 2014).

74. Personal Conversation with Margaret M. deGuzman, Assoc. Professor of Law, Temple Univ. Sch. of Law (Jan. 2014).

75. See Berkeley Mindfulness, *Mindfulness in the Criminal Justice System: A Panel Discussion at Berkeley Law*, YOUTUBE (June 25, 2013), <https://www.youtube.com/watch?v=IPdhZAhe16I>.

76. See Alexandra B. Morrison et al., *supra* note 15 (researching effects of ten minute mindfulness practice appended to beginning of class on wandering attention).

77. Professor Burt did so following his and a group of students being introduced to mindfulness at a meditation retreat offered to Yale students and led by Joseph Goldstein. See Rogers, *supra* note 1.

Perlmutter, who direct Miami Law's Immigration Clinic and Children & Youth Law Clinic, respectively, began to weave a short mindfulness exercise into their classes by beginning either their one-on-one Student Supervisions or Case Rounds group discussion by having students (and themselves) engage in a short mindfulness inquiry followed by a one-minute mindfulness practice.⁷⁸ At the 2014 AALS Clinic Conference they reported how this infusion positively changed the class dynamic, leading to more focused and refined conversations. Student feedback indicated the mindfulness component was helpful to them personally and professionally.

Perhaps the most thorough integration is found today in courses that explicitly include mindfulness or a related term in the title.⁷⁹ The emergence of these classes is beginning to dot the landscape of legal education. One subject that many regard as natural for this integration is professional responsibility. There are at least three reasons why this is so—each sparking a different conversation and requiring a complete discussion that is better left for another day. Each reason can be applied across courses and demonstrate what mindfulness practice can offer students. A brief discussion of the considerations that went into the development of “Mindful Ethics,” a course I have been teaching for the past four years, serves to illuminate these points.⁸⁰

In 2009, I joined forces with my colleague Jan Jacobowitz, an expert on legal ethics and professional responsibility, and together we developed the course curriculum for Mindful Ethics, a class we have taught each semester since Spring 2010.⁸¹ In doing so, we had three interconnected objectives: (1) offer a thorough introduction to and examination of the rules of professional conduct; (2) integrate mindfulness insights into the class dis-

78. Professors Perlmutter, Sharpless, and I presented on this approach at the 2014 AALS Clinical Education Conference.

79. Miami Law offers three such classes: Mindfulness in Law, Mindful Ethics, and Mindfulness and Leadership. Other examples are found at Berkeley Law, which offers Effective and Sustainable Law Practice: The Meditative Perspective; Florida Law, which offers Tools of Awareness for Lawyers; and University of San Francisco Law, which offers Contemplative Lawyering. While these three represent long-standing class offerings, other schools are offering classes that specifically integrate mindfulness into the curriculum. See e.g., *Mindfulness and the Study of Law*, THE MINDFUL L. SCH., www.themindfullawschool.com (last visited July 5, 2014).

80. A thorough discussion of the class is found in ROGERS & JACOBOWITZ, *supra* note 57, at 29. See also Jha et al., *supra* note 25; Jan L. Jacobowitz & Scott Rogers, *Mindful Ethics—A Pedagogical and Practical Approach to Teaching Legal Ethics, Developing Professional Identity, and Encouraging Civility*, 4 ST. MARY'S J. ON LEGAL MALPRACTICE & ETHICS 198 (2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2374120 [hereinafter Jacobowitz & Rogers, *Mindful Ethics*]; Rogers, *The Mindful Law School*, *supra* note 61, at 1200 n.39.

81. ROGERS & JACOBOWITZ, *supra* note 57; see *Finding Balance and Success in Law School*, THE MINDFUL L. STUDENT, <http://themindfullawstudent.org> (2014).

cussion; and (3) teach mindfulness exercises and create opportunities for them to be practiced and reinforced in and out of class.⁸² So that the different aspects of the class experience would reinforce the other, and so that students would not regard them as separate and distinct, class discussion weaves mindfulness insights and practices into the application of the professional responsibility rules in one's daily life, both personally and professionally.⁸³ And because the violation of ethical rules and unprofessional conduct can be triggered by emotionally charged circumstances, and take place during moments of high stress, we sought to further develop students' self-awareness and their ability to draw upon practices that could bring about a reduction in overall levels of stress.

In this regard, two often-discussed aspects of mindfulness training assumed a central role in the course—enhancing awareness and improving stress-reduction. An example of both these objectives uniting in a class demonstration and discussion is found in the use of a mindfulness teaching tool known as “The Spiral.”⁸⁴ This demonstration, which I developed as a general mindfulness teaching tool and began, in 2007, to integrate into mindfulness trainings with lawyers and law students, begins by identifying an event that threatens a lawyer's adherence to the rules of professional conduct (e.g., an obnoxious and unexpected legal maneuver by opposing counsel; a client finding out that part of their case was outsourced to another country; extreme lack of civility by opposing counsel). Rather than merely discussing the legal and bar-related implications of various ways a lawyer might overreact, the class—in an interactive discussion that feeds content onto a whiteboard displaying a large spiral—discusses the range of thoughts, feelings, and body sensations that frequently arise during such a challenging and threatening time.⁸⁵

These three phenomena—thoughts, feelings and body sensations—form the bedrock of mindfulness practice whereby we are invited to notice and attend to them, as an end in itself, and, in doing so, develop our capacity to become less reactive in moments of distress and perhaps even gain insight into the underlying mechanisms at play. At the very least, by turning attention inward during these moments, one more fully appreciates the “spiral” in which they have been caught and, through that awareness, have more of a chance to do something, like practice a mindfulness exercise, or realize

82. ROGERS & JACOBOWITZ, *supra* note 57.

83. *Id.* at 31–44.

84. SCOTT L. ROGERS, MINDFULNESS FOR LAW STUDENTS: USING THE POWER OF MINDFUL AWARENESS TO ACHIEVE BALANCE AND SUCCESS IN LAW SCHOOL 30–31 (2009); *see also* Jan L. Jacobowitz, *The Benefits of Mindfulness for Litigators*, LITIG., Spring 2013, at 28, 29 (discussing the application of this mindfulness tool).

85. *See* “The Spiral”, MINDFUL LAW CLASSROOM, <http://mindfullawclassroom.com/spiral.html> (last visited September 10, 2014).

something (like the other person is confused or suffering) to be somewhat released from the grips of the spiral.⁸⁶ Because mindfulness exercises are a part of every class—with one class devoted exclusively to an immersion in different mindfulness practices—students develop their capacity to engage greater mindful attentiveness and to draw upon mindfulness practices during stressful moments. In doing so, students come to appreciate how attending to one's interior experience during challenging times offers a useful means of becoming less reactive and more responsive to the needs of the moment, and of those they are charged with serving.

Bolstering this experiential practice is discussion about cutting-edge scientific research on neuroplasticity—brain regions associated with stress and decision-making—and the ways that stressful events can influence brain activity, and with it our reactions and conduct, both in the moment, as well as over the longer term.⁸⁷ Student observations on the changes they notice in the ways they relate to undesirable and challenging events lend support to the meaningful real-world impact of this pedagogical approach.⁸⁸

Two examples taken from students in the Mindful Ethics class that are illustrative of this include:

“For me, the ultimate benefit of the class is how it allows you to have a more balanced and a deeper understanding of yourself and others. In this respect, it almost seamlessly ties into professional responsibility because sometimes in the legal world you’ll have those spirals, and all you need is to stop, take a few breaths, reflect on the situation, and then respond.”⁸⁹

“By being able to identify the cycle that leads to this reactive state and also being empowered to stop the cycle is a tool that will be very beneficial for me not only in my practice, but also in my personal life.”⁹⁰

V. MINDFULNESS, BUDDHIST PSYCHOLOGY, ETHICS AND PROFESSIONAL IDENTITY

The above discussion of Mindful Ethics offers a fairly straightforward application of the integration of mindfulness into the classroom. It addresses important educational concerns such as the development and maintenance of focus and concentration, stress-reduction and wellbeing, and a heightened attentiveness to the subject matter being explored in class. Also relevant, but

86. *See id.*

87. *See Jha, supra* note 8, at 28; *See generally* SIEGEL, *supra* note 11.

88. *See generally* ROGERS & JACOBOWITZ, *supra* note 57 (containing a collection of student observations of their experience in Mindful Ethics).

89. *Id.* at 57.

90. *Id.* at 59.

not explicitly addressed above, is the cultivation and refinement of important skills in areas of communication, reflection, empathy, and social engagement. So too, as legal commentators are noting, fundamentally important educational objectives, such as the development of professional identity,⁹¹ are furthered by the infusion of mindfulness.⁹² These skills and attitudes may be especially nurtured in the professional responsibility class (as well as other classes similarly oriented around ethics, values, and rules of conduct) owing to an insight that flows through Buddhist psychology: the important role of *ethical behavior* in establishing a stable foundation for the development of concentration and wisdom.⁹³ While the nurturing of the above noted attributes and skills do not depend on an engagement in Buddhist practices, it is instructive to reflect on the common thread of “ethics” running through both traditional mindfulness practice and professional responsibility, a conversation that is beginning to emerge in the area of mindfulness in law.

As is more fully explored below, Mindful Ethics draws upon a natural connection between ethical conduct and mindfulness practice that is of reciprocal benefit. Just as the practice of mindfulness can help one cultivate a greater alignment between intention and conduct, thereby facilitating more professional, civil, and ethical action in the face of challenging circumstances, so too learning the rules of professional conduct and applying them to daily life, personally and professionally, can help one to establish a greater interior stability that benefits the practice of mindfulness.

A. Professional Responsibility and the Noble Eightfold Path

In setting forth the paradigm out of which mindfulness practices flow, the historical Buddha proffered what is known as the Noble Eightfold Path.⁹⁴ This prescription for living a life of integrity, awareness, and wellbeing is often broken down into three parts: ethics, mental discipline, and insight. Viewed as a linear progression,⁹⁵ ethics can be seen as the foundation for

91. See Martin J. Katz, *Teaching Professional Identity in Law School*, COLO. LAW., Oct. 2013, at 45.

92. See DHARMASEED.ORG, *supra* note 44; Jacobowitz & Rogers, *Mindful Ethics*, *supra* note 80, at 2; Magee, *Educating Lawyers*, *supra* note 1.

93. See *infra* notes 94–95 and accompanying text.

94. See GOLDSTEIN, *supra* note 35; Don Ellinghausen, Jr., *Venting or Vipassana? Mindfulness Meditation's Potential for Reducing Anger's Role in Mediation*, 8 CARDOZO J. CONFLICT RESOL. 63, 65–66 (2006); Van M. Pounds, *Promoting Truthfulness in Negotiation: A Mindful Approach*, 40 WILLAMETTE L. REV. 181, 183 (2003). See also Thich Nhat Hanh, *Five Wonderful Precepts*, THE MINDFULNESS BELL, Spring/Summer1990, at 1, 3, available at <http://www.mindfulnessbell.org/articles/mb02.pdf> [hereinafter Hanh, *The Mindfulness Bell*].

95. While a linear approach is helpful for seeing the role of ethics in facilitating a concentration practice, most agree that the three categories interrelate and support each other. For

concentration, which helps establish a quality of mindful engagement that is stable and receptive to the profound insights to be drawn from everyday experience. The following discussion does not endeavor to elaborate on Buddhist teachings and serves only to inform the reader, who might otherwise be unaware, of this aspect of Buddhist psychology that focuses on ethics, and of the belief that ethical attitudes and conduct support the development of mental discipline and insight. The relevance of this notion in the context of a class that teaches the rules of professional conduct informs the ongoing development of Mindful Ethics.⁹⁶

Buddhist ethical and moral conduct aims at promoting a happy and harmonious life both for the individual and for society. To offer instruction toward this end, the Noble Eightfold Path begins with the practice of *sila* (ethics), in which one aspires to abstain from actions, words, and deeds that harm oneself or another.⁹⁷ This practice includes being attentive to the decisions one makes with regard to speech, action, and livelihood, and are set forth as aspirations in the service of two objectives.⁹⁸ First, by engaging in “wholesome” actions, one is more likely to find an inner tranquility and peace. The second objective is that the inner stability arising from the practice of *sila* helps facilitate a quality of mind that is better able to concentrate and focus attention during a concentration practice. With regard to this latter point, moral conduct is considered as the indispensable foundation for all other attainments on the path.⁹⁹ This notion points to a second stage of the

example, concentration enables one to behave more ethically and insight inspires a concentrative attentiveness to moment-to-moment experience. See GOLDSTEIN, *supra* note 35, at 15; Walpola Rahula, *The Eightfold Path*, TRICYCLE MAG., available at <http://www.tricycle.com/new-buddhism/-noble-eightfold-path/eightfold-path>.

96. The objective of teaching the rules of ethics is different than that of fostering a more ethical way of conducting oneself. Of course, a teacher is hopeful that by exposing students to the rules and helping them understand their application, the student will be more likely to meet his or her own personal standards of conduct, and be less likely to inadvertently run afoul of such rules. Some commentators have suggested that the practice of mindfulness, in and of itself, helps to foster ethical behavior. See, e.g., Leonard L. Riskin, *Awareness and Ethics in Dispute Resolution and Law: Why Mindfulness Tends to Foster Ethical Behavior*, 50 S. TEX. L. REV. 493, 498–502 (2009); Pounds, *supra* note 94, at 183–84.

97. There is no consensus on order of practice of the Eightfold Path, though some commentators begin with *sila*, because they are to be practiced in parallel, with each supporting the other. See THICH NHAT HANH, *THE HEART OF THE BUDDHA’S TEACHING: TRANSFORMING SUFFERING INTO PEACE, JOY AND LIBERATION* 50 (1999) (noting the translation of “a noble path of eight limbs” speaks to the interrelationship among these eight elements); HAMMALAWA SADDHATISSA, *BUDDHIST ETHICS: THE PATH TO NIRVANA*, 62–63 (1987) (noting that the component parts are “not to be accounted as consecutive steps” and the “interrelation of the components is inevitable.”).

98. The Five Precepts, as they are traditionally known, include abstaining from killing, stealing, lying, sexual misconduct, and substance abuse. See THICH NHAT HANH, *FOR A FUTURE TO BE POSSIBLE: COMMENTARIES ON THE FIVE WONDERFUL PRECEPTS 1–3* (1993).

99. See Rahula, *supra* note 95.

training, known as *samadhi*, or mental discipline—the practice often associated with meditation.

While *silā* pertains to speech and physical action, the cause of suffering is frequently ascribed to mental activity. *Samadhi* entails a deliberate and sustained quality of effort, awareness and concentration. One locates an object, such as the breath, brings awareness to the object, and then *concentrates* attention on it. This aspect of the Noble Eightfold Path is commonly spoken of as “mindfulness,” though the term is much broader in its reach.¹⁰⁰ For many students being introduced to mindfulness today, along with those with a more Western-oriented frame, the concentration practice may be regarded as the heart of the practice.¹⁰¹ The third and final stage, known as *pañña*, or wisdom, entails a quality of thought and understanding out of which flows insight.¹⁰² Its practice involves, *inter alia*, taking one’s own physical sensations as the object of attention.¹⁰³ Through ongoing practice, greater insight is realized as to fundamental aspects of life such as impermanence, emptiness, and suffering.¹⁰⁴

B. Mindfulness in Professional Responsibility Education

The integration of mindfulness and professional responsibility in the Mindful Ethics curriculum follows the more contemporary approach of teaching basic concentration practices that can be helpful for stress reduction and lead to greater clarity during stressful and challenging experiences. Discussion around the impermanent nature of our experience—of thoughts, feelings, and body sensations triggered during moments of anger, jealousy, fear, and doubt, for example—and of the greater mastery we have over our decision-making when we pause (and notice) before reacting, are a part of the conversation, but are rooted in pragmatic inquiry. Infusing mindfulness exercises and insights amid conversations oriented around questions of professional conduct, help illuminate a deeper understanding of the ways we

100. In addition to concentration, this portion of the Eightfold Path includes effort and awareness. Effort entails the will to cultivate a mind that is ripe for practice and Awareness (or Mindfulness) is to be aware and attentive to the activities of the mind and body, to sensations and feelings, and to thoughts and ideas. *Id.*; HANH, *supra* note 97, at 64, 99.

101. I do not mean to suggest that those who teach a Western devised program or who research mindfulness do not fully appreciate the fullness of mindfulness from the Buddhist perspective. Surely many do, and there are pragmatic reasons to distill the teachings. At the same time, a great many more recently introduced to mindfulness have a more basic understanding—which may, in the end, be what matters most. In time, especially, as mindfulness teachers and trainings continue to interact with each other, these lines will blur and a more coherent understanding and discussion of mindfulness likely will emerge.

102. WILLIAM HART, *THE ART OF LIVING: VIPASSANA MEDITATION* 58 (2009).

103. *Id.*

104. See GOLDSTEIN, *supra* note 35; HANH, *supra* note 97, at 132–33.

can overreact to situations and what we can do to respond more effectively.¹⁰⁵

An interesting question is raised with regard to how the discussion and application of the rules of professional conduct—which in many ways express the elements of *sila* (e.g., being truthful, not stealing; avoiding dishonest dealings and speech that creates enmity)¹⁰⁶—may create an especially rich environment for the practice of mindfulness.¹⁰⁷ Of course, there is a difference between learning rules of conduct to pass a bar exam and applying those rules in daily life, and the core concern of the typical Professional Responsibility class is to teach students the rules and their application. Moreover, because students are not practicing law, the opportunity to relate the rules to one's professional life are limited and often left to the creative ways faculty endeavor to have students role play and contemplate real-world scenarios.

An interesting difference between *sila*, as it is practiced, and the closely connected moral and ethical codes of conduct rooted in Western traditions is the regular and ongoing awareness that is explicitly brought to the aspirations that comprise *sila*.¹⁰⁸ For example, Thich Nhat Hanh,¹⁰⁹ encourages mindfulness pupils to recite the “Five Mindfulness Trainings”¹¹⁰ regularly to keep them actively in mind while engaging in daily life and practicing formal concentration exercises. In teaching professional responsibility, the rules of ethics for our profession are made salient. Not surprisingly, when the rules are taught in CLE and other courses available to practicing lawyers, many practitioners promptly reflect upon and integrate them into their professional lives.

105. See Jacobowitz & Rogers, *Mindful Ethics*, *supra* note 80, at 229–31; ROGERS & JACOBOWITZ, *supra* note 57, at 40–43.

106. Much as they do in many codes of conduct.

107. This notion is all the more pertinent given the challenge many report in “sitting still” to practice mindfulness.

108. See also Hanh, *The Mindfulness Bell*, *supra* note 94, at 3 (relating the Five Precepts with moral and ethical codes central to Judaism and Christianity). Of course, those for whom religion plays a regular and immersive part in their lives frequently may draw upon texts and bring to mind codes of moral conduct. But the experience of many, for whom religion plays a meaningful role in their life, is that they do not deliberately reflect upon moral and ethical rules on a regular basis. The insight of the regular practice of *sila* is that it keeps the aspired-to-conduct *in mind*, which may influence one's moment to moment decision making. *Id.*

109. Thich Nhat Hanh's popular and bestselling books on mindfulness include: *PEACE IS EVERY STEP: THE PATH OF MINDFULNESS IN EVERYDAY LIFE* (1992); *ANGER: WISDOM FOR COOLING THE FLAMES* (2002); *THE MIRACLE OF MINDFULNESS: AN INTRODUCTION TO THE PRACTICE OF MEDITATION* (1999).

110. The “Five Mindfulness Trainings” refer to Thich Nhat Hanh's popular translation of the “Five Precepts.” See *The Five Mindfulness Trainings*, DEER PARK MONASTERY IN THE GREAT HIDDEN MOUNTAIN, <http://deerparkmonastery.org/mindfulness-practice/the-five-mindfulness-trainings> (last visited Aug. 3, 2014).

A corollary in the professional responsibility classroom would be to have students connect the rules of professional conduct with a personal ethic for daily living so that they might notice, with greater acuity, the prevalence of situations that trigger these rules and pay greater attention to the ways it affects them and how they make decisions that threaten or run counter to their values.¹¹¹ In Mindful Ethics, we seek to accomplish this through the use of reflective journaling where students place themselves in the shoes of an attorney who makes an ethical misstep and develop a first-person account of the experience, attending to the thoughts, feelings, and body sensations that accompany the decision.¹¹² This exercise leads to classroom discussion exploring the rules violated, bar consequences, and other practical implications.

Taking this one step further, to help students more fully connect with and integrate the rules they are learning, we have recently begun to introduce an exercise that invites students to connect the dots between the rules and their daily lives—and to extract from this consideration specific instances in their daily lives that raise issues that share underlying themes with the rules.¹¹³ By making salient these connections and explicitly identifying present day applications, students are able to recognize everyday, seemingly benign situations that nonetheless carry ethical considerations.

When students are initially introduced to the Model Rules of Professional Conduct, we provide them with a form that asks them to reflect on “what makes for a professional and ethical attorney . . . and [to] give thought to . . . the aspirations you hold out for yourself as an attorney, recognizing that it is an exciting and stressful environment in which you’ll be interacting with colleagues, clients, adversaries, judges, and perhaps most importantly, yourself.”

To assist them in identifying and aligning attributes that dovetail with both a professional and personal ethic, students are instructed to complete five open-ended sentences that ask them to identify an aspiration for conduct that relates to a fundamental aspect of the legal profession. Each sentence takes the following form:

111. See also Alan Lerner, *Using our Brains: What Cognitive Science and Social Psychology Teach us About Teaching Law Students to Make Ethical, Professionally Responsible, Choices*, 23 QUINNIPIAC L. REV. 643, 656 (2004); Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425, 430 (2005).

112. See Rogers, *The Mindful Law School*, *supra* note 61.

113. I use this exercise in the “Mindfulness in Law” class, where I explore with students its usefulness in helping establish a more stable foundation upon which to practice mindfulness. A copy of this exercise can be downloaded from the class website. Scott L. Rogers, *Home*, MINDFULNESS IN L., (Aug. 3, 2014 9:39 PM) www.mindfulnessinlawclass.com.

When interacting with [e.g., opposing counsel, my clients, the court, my colleagues], I aspire to be _____.

The exercise then moves from the professional to the personal, asking students to translate each of their aspirations for law practice into a situation to which they can currently relate and apply to their lives as students. For example, a student who aspires with opposing counsel to be “civil and treat them with respect,” may apply that aspiration to a classmate or roommate with whom they are currently experiencing difficulties. A student who aspires to “be an effective communicator” with their client may apply that aspiration to communicating more effectively with a partner with whom they find communication to be difficult at times. A student who aspires to be “truthful” to the court may apply that aspiration to be more truthful when speaking with their parents.

This exercise allows students to identify and endeavor to align their personal ethics and professional aspirations at the very time they begin to learn the specific proscriptions that govern the legal profession. Asking them to translate these forward-looking professional aspirations to their lives as law students breathes life into these ethical considerations and offers students the opportunity to bring them into awareness and apply them while they are learning and grappling with the rules. Students will project onto their personal lives an application of the rules that connects with issues they are presently grappling with. This process makes it possible for each student to identify for themselves a small number of personal aspirations with regard to how they treat others that can be reflected on throughout the course of the semester. With these aspirations primed, students are more likely to notice moments when they become agitated and reactive, bringing greater awareness of the experience and their response. Should this practice help students establish greater alignment between their intentions and conduct, it may prove to be a stabilizing force that helps support them in their concentration practice—much in the way *sila* serves this end. In this regard, offering instruction and the opportunity to practice mindfulness in the professional responsibility class provides students with an especially fertile environment for doing so.

VI. CONCLUSION

The legal academy is deeply committed to the academic success and emotional wellbeing of law students who, soon enough, join the ranks of lawyers, judges, law faculty, and business leaders. This pivotal moment in time offers those involved in legal education an especially ripe opportunity to meaningfully participate in the development and implementation of new and exciting ways of enriching the learning (and growing) experience for

law students. Among the diversity of approaches being taken, the integration of mindfulness into the curriculum and across the law school experience is one that has taken root and is beginning to emerge on law school campuses across the country. Interest in mindfulness within the legal profession coincides with its proliferation across much of society and offers those who seek to learn, practice, and teach mindfulness, for both professional and personal benefit, an especially abundant environment for doing so. Even more, because finding skillful and effective ways to bring mindfulness into legal education is an ongoing experiment, doing so naturally engages one's creative and passionate embrace of teaching—a quality that benefits us all.